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Foreword

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FOREWORD

The following twenty Comments make up the first issue of the *Boston College Law Review's* electronic supplement. These Comments, written by second-year students, comprise a survey of recent federal en banc decisions of note, and other significant cases. Each Comment is intended to present a clear overview of the decision, a discussion of the important issues, and a meaningful perspective on its consequences for litigants.

In *United States v. Textron*, the First Circuit handed the IRS a victory by subjecting companies' tax accrual workpapers to discovery in tax litigation, creating potential concerns for companies in non-tax settings. In *Fox Television Stations, Inc. v. FCC*, the Second Circuit struck down the FCC's latest attempt to regulate indecent speech, signaling a major win for broadcasters and putting one more crack in the Supreme Court's *Pacifica* precedent. The Third Circuit, in the bankruptcy case of *In re Grossman's, Inc.*, overruled a 1984 precedent when it held that the tort claims of a person exposed to a Chapter Eleven debtor's asbestos-containing products arose pre-petition, despite their post-petition manifestation. In *North Carolina ex rel. Cooper v. Tennessee Valley Authority*, the Fourth Circuit undercut the viability of public nuisance claims in environmental litigation, holding that the Clean Air Act preempts state nuisance claims and that the issuance of a permit makes those claims legally impossible.

The Fifth Circuit, in *Castro v. United States*, held that a government employee's conduct could fall within the Federal Tort Claims Act's discretionary function exception even if a constitutional violation may have occurred. Judge Richard Posner of the Seventh Circuit created a unique standard for applying the equal terms provision of the Religious Land Use and Institutionalized Persons Act in *River of Life Kingdom Ministries v. Village of Hazel Crest*. Also in the Seventh Circuit, the court in *United States v. Skoien* upheld a federal ban on the possession of firearms by domestic violence misdemeanants against a Second Amendment challenge.

Several important en banc decisions were recently decided by the Ninth Circuit. In *Perdomo v. Holder*, the court took a step forward in recognizing gender as a "particular social group" for the purposes of the federal asylum laws, making it easier for persecuted women to seek refuge in the United States. In *Pinholster v. Ayers*, the court held that a death row inmate had received ineffective assistance of counsel

at the sentencing phase because his lawyers failed to present a mitigation case. In *Dukes v. Wal-Mart*, the court approved the class certification of female Wal-Mart employees in a sex discrimination lawsuit, despite the company's policy of leaving employment decisions to local branch managers. Chief Judge Alex Kozinski, in *Murdoch v. Castro*, wrote that under the Antiterrorism and Effective Death Penalty Act, state court decisions presumptively adjudicate federal claims on the merits even where no state court has even addressed a federal claim raised in the habeas petition. Finally, in *United States v. Nevils*, the court reaffirmed the high bar appellants must clear to make out a viable claim for insufficient evidence.

The survey examines three cases from the Eleventh Circuit. In *Dodge v. United States*, the court applied a non-categorical approach in deciding whether a defendant is required to register under the Sex Offender Registration and Notification Act, creating potential due process concerns down the road. The Eleventh Circuit also decided *United States v. Sneed*, holding that courts may not use police reports to determine if prior offenses occurred for the purposes of the Armed Career Criminal Act. And the same court held, in *Randall v. Scott*, that the First Amendment protects a right to political candidacy.

In *American Equity Investment Life Insurance Co. v. SEC*, the D.C. Circuit struck down an attempt by the SEC to bring fixed indexed annuities into its regulatory purview. In *Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co.*, the Federal Circuit held that the first paragraph of 35 U.S.C. § 112 contains a written description requirement separate from the enablement requirement. And in Nebraska, a federal district court in *Planned Parenthood of the Heartland v. Heineman* struck down a state law requiring doctors to give abortion patients an impossibly long list of disclosures in order to obtain their informed consent.

Two state cases are discussed in this issue. In *Commonwealth v. Runyan*, the Supreme Judicial Court of Massachusetts upheld that state's safe storage statute against a Second Amendment challenge. And in *Kaur v. New York State Development Corp.*, the New York Court of Appeals upheld the broad power of the state to condemn private property and transfer it for private use in the name of economic development.